

HA4JRAMC

Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 JENNY RAMGOOLIE,

4 Plaintiff,

5 v.

16 Civ. 3345 VEC SN

6 ANDY RAMGOOLIE,

7 Defendant.

8 -----x

9
10 October 4, 2017
11 3:14 p.m.

12
13 Before:

14 HON. SARAH NETBURN,

15 U.S. Magistrate Judge
16
17

18 APPEARANCES

19 HOWARD ADAM BENDER,
20 Attorney for plaintiff

21
22 TERRY ANTHONY BROSTOWIN
23 Attorney for defendant
24
25

HA4JRAMC

Conference

1 (In open court)

2 (Case called)

3 THE COURT: Good afternoon. Please be seated.

4 I have Mr. Bender's September 14 letter. I have given
5 Mr. Brostowin an opportunity to respond. I don't have a
6 responsive letter, so I wanted to make sure you didn't submit
7 one and it got lost?

8 MR. BROSTOWIN: I did not. I figured it would save it
9 for today.

10 THE COURT: All right. So I want to talk about these
11 issues here. Obviously, the case has shifted a little bit with
12 the appearance of Mr. Bender, and I have reviewed his letter
13 and I have done some legal research on my own. How shall we
14 begin? Mr. Bender, is there anything to add to what you have
15 in this letter?

16 MR. BENDER: No. I think the letter sets forth my
17 arguments fairly.

18 THE COURT: Mr. Brostowin, let's set aside how many
19 interrogatories. I feel like that is a collateral issue. I
20 want to focus more on this issue of the types of documents that
21 are being sought. So why don't you tell me your position on
22 that.

23 MR. BROSTOWIN: My position is the documents that are
24 being sought now, if I would just start through his list, as
25 this Court well knows, the issue is now limited to strictly to

HA4JRAMC

Conference

1 liability and not to valuation.

2 The first document being sought are my client's three
3 years worth of tax returns, 2014 through 2016. I do not see
4 how that goes to liability in terms of whether or not there is
5 a contract, an agreement, any type of promise to give the
6 plaintiff any monies in a corporation. It is strictly a tax
7 return.

8 THE COURT: A personal tax return?

9 MR. BROSTOWIN: A personal tax return, that is
10 correct. I find that inappropriate. We can go one-by-one, but
11 the vast majority of all of the other document requests are
12 document requests from corporations, not from my client,
13 corporations that have been dismissed, corporations that are
14 not within the United States of America, and specifically Anco
15 has not been conducting business for, I don't have exact, but I
16 think over a year now.

17 THE COURT: As I understand counsel's argument, he is
18 saying that here is what we know. We know there was this
19 company Anco, we know that your clients had I think one of two
20 shares in the beginning and then the shares switched.

21 Is that factually correct?

22 MR. BROSTOWIN: I don't think it was on or two, but he
23 had more shares initially, and those shares, according to my
24 client, were readjusted downward because that was an error.
25 That is the position that has been taken for a long time in

HA4JRAMC

Conference

1 other litigation.

2 I don't want to say irrespective of whether or not
3 what his percentage was of Anco at any one particular point in
4 time, it is down to I believe 6 percent, I could be mistaken
5 because I am doing different corporations now. It is below 15
6 percent, 6, 8, I am not exactly sure what it is.

7 THE COURT: Does anybody have shares in Anco?

8 MR. BROSTOWIN: Anco has not conducted business for I
9 think over a year now, no income, no expense, no anything, no
10 business.

11 THE COURT: What I understand the plaintiff's position
12 to be is that Mr. Ramgoolie had a certain number of shares. At
13 a later point in time that was coincident with the breakdown in
14 the relationship between Jenny and Andy, Andy reduced the
15 number of his shares and redistributed the shares in a way that
16 would prevent Jenny from getting any sort of control or
17 ownership over the company, and so as I understand the
18 plaintiff's position is that the documents surrounding that
19 transaction as well as the transaction of shutting down Anco
20 and starting up KDR in the same location with the same
21 employees and the same materials, et cetera, would be
22 circumstantial evidence in support of the argument that there
23 once was an agreement between these two parties and that Andy
24 was taking action that had no other legitimate business reason,
25 and only the reason is to sort of limit his sister's

HA4JRAMC

Conference

1 opportunity for ownership and shares.

2 MR. BROSTOWIN: I will say --

3 MR. BENDER: Your Honor, that is incredibly accurate.

4 MR. BROSTOWIN: -- I will say what has been
5 characterized as coincidental or current in time when Jenny
6 filed the lawsuit actually predated that quite a bit. There is
7 other litigation, as this Court well knows. My client is in
8 the middle of a divorce proceeding of which these proceedings,
9 there is supposed to be no transfer of documents between one
10 proceeding to the other, especially since matrimonial is
11 confidential in nature.

12 Andy has and had no control over the closing of Anco,
13 the setting up of KDR. That was strictly done by I believe it
14 was Kevin and Jeremy, so that was not -- I understand what the
15 allegation is, but at the point in time that that occurred, he
16 had I want to say 6 percent, but I don't want to be married to
17 that number, but a very low percentage in the company.

18 He had no control in terms of any operation of the
19 company since 2014, three years ago. I have documents to show
20 that. I have a document from the accountant saying that my
21 client has received ever since the formation of Anco until the
22 day that it no longer ceased doing business, that he received
23 not one dollar from that company, he never received any
24 proceeds from that company. So he was not as involved as
25 Ms. Ramgoolie, the plaintiff, is leading one to believe.

HA4JRAMC

Conference

1 THE COURT: Isn't it a little bit odd, he was plainly
2 formative in the creation of Anco, right?

3 MR. BROSTOWIN: Yes.

4 THE COURT: So he creates this company. Ms. Ramgoolie
5 thinks it is successful. I have no idea whether it is or not.

6 He creates this company and at a certain point he
7 gives up his interests without any sort of explanation. Maybe
8 he sold them. That would be relevant. It seems like from the
9 outsider perspective that he is just moving stuff around and
10 giving up rights and assets without a sort of legitimate
11 business reason. I think that is what is animating this
12 inquiry.

13 MR. BENDER: That is for the purpose of frustrating
14 her efforts of showing that the arrangement that they came to
15 was fruitful, that it developed into Anco, that it was a 50
16 percent partner. In fact, when Anco started, Mr. Ramgoolie did
17 have one share. I believe Kevin Ramgoolie had the other share.

18 Those shares were then diluted until 6 percent, but
19 the mother of Jenny and Andy, I believe, obtained somewhere in
20 the neighborhood of maybe 45 percent of the shares, to a point
21 where if you compare the mother's shares with Andy's shares,
22 they had a controlling interest, exactly 51 percent of the
23 company.

24 Ms. Ramgoolie has also testified that while she was
25 the bookkeeper at Anco, this was in 2014, the company was, in

HA4JRAMC

Conference

1 fact, very profitable. She has also testified that
2 Mr. Ramgoolie wanted to rearrange his profitability from the
3 company from being a shareholder to actually selling the
4 company, merchandise, importing the merchandise from the United
5 States and reselling it to Anco and made his money back that
6 way. We are thinking that is what actually happened here, is
7 that he is getting rid of his shares and he is making it up by
8 creating companies and selling merchandise to Anco and possibly
9 not KDR.

10 MR. BROSTOWIN: I don't know where she testified.
11 There is a lawsuit out there also I don't know about.

12 MR. BENDER: It is alleged in the complaint.

13 MR. BROSTOWIN: Be that as it may, my client has --
14 again there is other litigation -- has taken the position that
15 the shares that I guess diluted or gave away, whatever term is
16 going to be used, the initial creation was in error. It was an
17 accounting error. That is the position he has always taken in
18 the litigation, more specifically in the matrimonial
19 litigation. It is not a reallocation of his equity in the
20 company. It was just a correction of the formation of the
21 shares when it was formed initially.

22 THE COURT: That seems like a big mistake.

23 MR. BENDER: Considering the fact there is now three
24 other shareholders that are part of the company that are
25 somehow left out of the original. Even if that is the case,

HA4JRAMC

Conference

1 prove it, provide us the documentation so our theory of the
2 case can be disproven.

3 MR. BROSTOWIN: All the shareholders live in Trinidad
4 and Tobago and they're family members, as-is the plaintiff
5 here. This is a familial case right here. It is not like they
6 were given to strangers. They worked the business, they do
7 things, make the operational decisions for the company, so
8 those type of things, the operation had always been done in
9 Trinidad and Tobago, that is where the company is and was and
10 is. So he is here in New York. They're doing it down in
11 Trinidad.

12 I have been doing this long enough to know there are
13 times when people start a company, they start to divest
14 themselves of the company, other people are working. Instead
15 of putting financial equity into it, they could be putting
16 sweat equity, work equity, intellectual equity. There are
17 things that people do.

18 THE COURT: That is the exact theory he is,
19 Mr. Ramgoolie is bringing.

20 MR. BROSTOWIN: The issue being if other people gain
21 equity in a company, where they did not have when it initially
22 started, I think the intimation is that my client intentionally
23 had given it to them for nothing, a nefarious transfer of
24 shares in a company. That is what I think I am hearing unless
25 I am wrong.

HA4JRAMC

Conference

1 THE COURT: Other than relevance, do you have any
2 other objection here to these documents?

3 MR. BROSTOWIN: My client does not have control of
4 them. He had no operational control since 2014. So he does
5 not have the ability to get the records from Trinidad and
6 Tobago, and I think there needs to be a distinction between
7 Anco and KDR, maybe, maybe not.

8 MR. BENDER: We have not asked for any documents from
9 KDR.

10 MR. BROSTOWIN: Maybe I could be wrong. If I am, I
11 apologize.

12 MR. BENDER: The fact they are family members which
13 Mr. --

14 MR. BROSTOWIN: No, you did ask about KDR.

15 MR. BENDER: I asked about KDR, what in terms of what
16 transfer of shares or --

17 THE COURT: Can I encourage you to speak more slowly?

18 MR. BENDER: KDR's reference in the request is as a
19 possible party providing consideration for the shares or assets
20 of Anco. I have not asked for any documents for KDR.

21 MR. BROSTOWIN: Look at Request No. 2, documents
22 evidencing governmental filings. I don't know how my client
23 will get governmental filings from a company in another
24 country.

25 MR. BENDER: As he said before, every shareholder of

HA4JRAMC

Conference

1 this company is part of the Ramgoolie family. It is not as
2 though there are 15 other shareholders and he wasn't a
3 controlling member and he doesn't know who these shareholders
4 are.

5 These are his nephews. They should be able to provide
6 him the documents. The fact it is a foreign corporation and
7 the documents may be located outside of the jurisdiction of
8 this Court does not mean he does not have control over these
9 documents, which means he should have documents over them and
10 be able to provide.

11 MR. BROSTOWIN: One cannot say they have control,
12 access and care and control of the documents since the person
13 they're getting it from is a family member. The plaintiff is a
14 family member also. I don't know how willing she would be to
15 giving documents to my client if it were not requested as part
16 of a document request.

17 MR. BENDER: If she were a the shareholder of the
18 company, that would change the equation.

19 THE COURT: I don't need you all to have a
20 conversation in front of me. I will order Andy Ramgoolie to
21 produce documents related to Anco on the following topics:

22 Documents related to shares -- I'll start from
23 chronologically -- documents related to the corporate creation
24 of Anco, ITS structure, any corporate bylaws, et cetera,
25 documents related to shareholders of Anco, to the extent that

HA4JRAMC

Conference

1 there ever was a change in the number of shares that are issued
2 and who becomes a shareholder, all of the documents related to
3 that including any communications that Andy has that involved
4 decisions to transfer shares, reduce shares, dilute the number
5 of shares.

6 And then documents that relate to the transfer of
7 assets, both real and intellectual, from Anco to KDR, so those
8 will be documents that reflect Anco's transfer of assets as to
9 KDR. I am not looking for documents, not ordering the
10 documents related to what KDR is doing now or its corporate
11 structure at this point. It is just the transfer from Anco to
12 KDR.

13 I am satisfied, based on the information I have and
14 based on my knowledge of the case and the facts here, that Andy
15 does have access to these corporate records based on his
16 relationships and his role in the creation and growth of Anco.
17 I will order these documents be produced.

18 With respect to Mr. Ramgoolie's tax returns, that I
19 don't see a basis for unless there is an argument on it.

20 MR. BENDER: There isn't, your Honor.

21 As part of this overall equation here, what we are
22 looking for is if the shares and assets were transferred, were
23 they transferred for fair value. As part of that equation, we
24 would need to assess what was the value of Anco during the time
25 of these two transactions. While we don't necessarily need his

HA4JRAMC

Conference

1 tax returns, we would request that some documentation be
2 provided so we could have an understanding in terms of what the
3 actual value of Anco was while these to transactions took
4 place.

5 MR. BROSTOWIN: It is my position liability needs to
6 be established first before valuation would be addressed.

7 THE COURT: Again I think the argument that is being
8 made here is that if this is a sham transaction designed to
9 block Jenny Ramgoolie from her ownership interests, which would
10 be demonstrated through significant asset transactions without
11 any exchange of money, that that would be evidence or would be
12 consistent with their prior agreement to share this asset, and
13 so I agree with you that I am not requiring discovery on
14 damages now and what the ultimate value of the asset is.

15 I think the types of documents I just ordered to be
16 produced I think would cover what Mr. Bender is referencing, so
17 any documents that relate to the corporate decision to go from
18 two shares to 10,000 shares, presumably assigned some sort of
19 value to that transaction, and then the distribution of all
20 these shares to people who previously were not shareholders,
21 there should be some record as to how the corporation is
22 valuing that.

23 So those documents need to be provided, and again to
24 the extent that Anco is transferring all of these assets to KDR
25 that they be paid for, the value of these assets, again, real

HA4JRAMC

Conference

1 and intellectual, those documents have to be turned over as
2 part of the liability theory here.

3 MR. BROSTOWIN: What may complicate this somewhat
4 eventually is that my client's wife is taking a marital
5 property value to anything, anything that is held in Trinidad
6 and Tobago, specifically Anco, it will be alleged, is KDR,
7 whatever, that may complicate issues down the road, just to
8 throw it out there.

9 THE COURT: I am sure it will, but I don't know that
10 there is any solution.

11 MR. BROSTOWIN: I am just making a statement to your
12 Honor.

13 THE COURT: The Anco documents need to be produced.
14 The tax returns do not need to be produced.

15 With respect to the interrogatories, it seems like an
16 issue that could be resolved by the parties. Interrogatories
17 often have limited efficacy, so I am going to allow the
18 plaintiff to select 15 interrogatories to serve on Andy
19 Ramgoolie. I believe that would be adequate.

20 MR. BROSTOWIN: There may have been less than 15 asked
21 for.

22 MR. BENDER: In more recent version there were.

23 MR. BROSTOWIN: In less than 15?

24 MR. BENDER: Less than 15.

25 THE COURT: Off the record.

HA4JRAMC

Conference

1 (Off-the-record discussion)

2 THE COURT: Thank you. So as to the production of
3 documents, so we are in early October, today is October 4th,
4 let's have those documents, I would like your clients make
5 every effort to produce them as quickly as possible on an
6 rolling basis.

7 MR. BROSTOWIN: I may have some of the documents. I
8 may have some of the documents.

9 THE COURT: Wonderful. I will set an absolute
10 backstop of November 1st, but it should be a rolling
11 production.

12 MR. BROSTOWIN: Whatever I do have that is responsive
13 I will get over to Mr. Bender immediately.

14 THE COURT: Anything further from either side?

15 MR. BROSTOWIN: No.

16 MR. BENDER: No.

17 THE COURT: Thank you.

18 (Court adjourned)

19
20
21
22
23
24
25